

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.11142 of 2019
Date of decision: 15th March, 2019

Vivek Kumar

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Anil Kumar Sharma, Advocate for the petitioner.

Mr. A.S. Sandhu, Addl. Advocate General, Punjab
for the respondent/State.

FATEH DEEP SINGH, J. (ORAL)

Allegations against the petitioner Vivek Kumar in this first regular bail application under Section 439 Cr.P.C. in case bearing FIR No.238 dated 29.09.2018 under Sections 363, 366, 366-A, 354-D IPC and Section 12 of the Protection of Children from Sexual Offences Act, 2012 pertaining to Police Station Sohana, District S.A.S. Nagar, have been levelled by Puran Singh father of a girl aged around 15 years. Alleging that on 28.09.2018 when his daughter, the victim, did not return home from her sewing classes and they could not trace her, apprehending that somebody had kidnapped her, got lodged the present FIR. It is subsequent thereto, on 30.09.2018 the girl was recovered and her statements were recorded and the petitioner was arrested on the same very day.

Learned counsel for the petitioner Mr. Anil Kumar Sharma inter alia contends that statements of the girl under Section 161 Cr.P.C. and 164 Cr.P.C. nowhere level any allegation against the petitioner and had only stated that she had volunteered and that no wrong act was committed by the petitioner.

On behalf of the State, Mr. A.S. Sandhu, Addl. Advocate General, Punjab on instructions from SI Harsh Mohan, Police Station Sohana, District SAS Nagar though has not controverted the facts brought to the notice of this Court by learned counsel for the petitioner, but has opposed the grant of bail on the grounds that report of Chemical Examiner as to the vaginal swabs establishes presence of spermatozoa, though accedes to the fact that the girl neither in her statements under Sections 161 and 164 Cr.P.C. nor she and her father in their stand before the trial Court have supported the prosecution version and in view of the heinousness of the offence has prayed for declining the relief.

Going through the submissions of the two sides, neither in the FIR nor in the statements of the girl under Sections 161 and 164 Cr.P.C. there is any allegation of forcible kidnapping or enticing away of the victim by the petitioner. As per the stand of the State, even at the trial the girl has not supported the prosecution version. The petitioner is behind bars since a long time. Culpability, if any, shall be determined at the trial which is not likely to conclude soon. Thus, this Court is of the opinion that no useful purpose will be served by keeping the petitioner in

custody in the present case. Accordingly, he is ordered to be released on regular bail to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, S.A.S. Nagar. However, it is made clear that anything observed herein shall not be construed as an expression on the merits of the case.

The petition stands disposed off accordingly.

(FATEH DEEP SINGH)
JUDGE

March 15, 2019
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No